

83-85-I

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August 3, 1983

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Mr. Robert X. Danos, Director
Division of Safety Services
Department of Safety
Hazen Drive
Concord, New Hampshire 03301

Dear Mr. Danos:

By memorandum dated June 30, 1983, you requested an interpretation of the definition of "carnival or amusement ride" and its application to a list of various amusement rides. It is our opinion, on the basis of the information provided, that all but two of the nineteen rides listed appear to qualify as carnival or amusement rides. You should, however, carefully review each of the amusements on the list in light of the following interpretation.

The definition of "carnival or amusement ride" in RSA 321-A:1, I reads as follows:

"a device which carries or conveys passengers for the purpose of giving its passengers amusement, pleasure or excitement."

Since under the provisions of RSA 21:2 all words used in the statutes are to be construed according to the common and approved usage, we must interpret the definition of "carnival or amusement ride" accordingly. See also Appeal of John Denman, 120 N.H. 568 (1980). The language of RSA 321-A:1 clearly requires that the item in question, in order to be subject to the provisions of RSA 321-A, must be a device, must convey or carry people, and must do so for the purposes of amusement, pleasure or excitement. A device is defined by Webster's Third



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International Dictionary (1966) as "a piece of equipment or a mechanism designed to serve a special purpose or perform a special function." In order to satisfy this requirement of the statute, the amusement must therefore convey or carry by means of some sort of mechanism. Thus, an animal used to convey passengers for an amusement would not qualify. Moreover, a device which carries people solely for transportation purposes would not qualify, nor would a device that amused people but did not carry or convey them. Therefore, a walk-through amusement that neither carried or conveyed people would not be subject to regulation, nor would a ride purely for transportation purposes. All of the elements of the definition must be present.

Applying this definition to the list contained in your memorandum, items 1-17 would all appear to qualify as carnival or amusement rides. Although item 7, the walk-through "Silver Mine," would seem to have devices that carry or convey as only a part of the amusement, it should nonetheless be subject to the provisions of RSA 321-A even if the device does not constitute the whole amusement. Similarly, item 17, fun house with moving parts, would qualify so long as the moving parts were used to carry or convey people.

Items 18, fun house without moving parts, and 19, moon walk (only mechanical part is fan to keep same inflated) would appear not to qualify as amusements, however, since they apparently have no devices used to convey people.

It should further be noted that I reviewed the legislative history of this statute and found nothing that would assist in further clarifying the definition.

I trust this has been responsive to your question. Please let me know if you have any further questions.

Sincerely,

Douglas L. Patch
Assistant Attorney General
Division of Legal Counsel

DLP:ab

cc: Mr. Richard M. Flynn, Commissioner
Mr. Earl Sweeney, Deputy Commissioner

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